CF0000060128

(2)

Cr) A 265/98

High Court of M.P.
JABALPUR
- 7 NOV 1998
Reg. No. 231
Recept Clerk
High Court, Jabalpur

P. 1-199 (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

No. 1831 Name इन्द्राबाई @ अन्य एक महबंदिनी Division Bench (Criminal)

Father's name तिजूराम सतनामी निवासी पुरानी बस्ती कोहका थाना-मुरेना

Residence जिला-दुर्ग म0प्र0 Age 43 वर्ष

Sentenced to आजीवन कारावास On 15/04/98

Under Section 302 भा0दं0वि0 by माननीय प्रथम अपर सत्र न्यायाधीश दुर्ग म0प्र0

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not - Yes / No

No. 1831 Name इन्द्राबाई पत्नि तिजूराम @अन्य एक महबंदिनी

Confined in केन्द्रीय Jail रायपुर म0प्र0

No. 329/विधि/98 Dated 03/11/1998

Forwarded to the CHIEF JUDICIAL MAGISTRATE माननीय रजिस्ट्रार जनरल महोदय, माननीय उच्च न्यायालय म0प्र0 जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- सत्र प्रकरण क्रमांक-391/97 की सत्यापित प्रति, विलंब के संबंध में आवेदन पत्र।

Superintendent
Central Jail Raipur (M.P.)

Date of receipt in ..... office 15-11-98 3-11-98

Date of receipt record to accompany the Memo of Appeal to the Appellate court

No ..... Dated 199

Forwarded to the .....

Date of receipt in Appellate Court .....

(P. T. O.)

130

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH": HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI SATISH AGNIHOTRI, JJ.

CRIMINAL APPEAL No.2650 OF 1998

Indra Bai and another

Versus

State of M.P. (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. BHADOO
Judge

HON'BLE MR. JUSTICE SATISH AGNIHOTRI

Sd/-
SATISH K. AGNIHOTRI
Judge

POST FOR JUDGMENT ON 16th NOVEMBER, 2005

Sd/-
L.C. BHADOO
Judge

(131)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH*:HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI SATISH AGNIHOTRI, JJ.

CRIMINAL APPEAL No.2650 OF 1998

Indra Bai and another

Versus

State of M.P. (now Chhattisgarh)

Present:
Shri Abhay Tiwari, Advocate: For the appellants.

Shri Ashish Shukla, Public Prosecutor
with Shri M.P.S. Bhatia, Panel Lawyer: For the State/respondent.

JUDGMENT

(Delivered on 16th November, 2005)

The following judgment of the Court was delivered by Justice L.C. Bhadoo:-

1. The accused/appellants have preferred this criminal appeal through Superintendent, Central Jail, Raipur questioning the legality of the judgment dated 15-4-1998 passed by the 1st Additional Sessions Judge, Durg in Sessions Trial No.391/97 whereby the learned Additional Sessions Judge after convicting the accused/appellants for the commission of the offence under Section 302 of the I.P.C. sentenced each of the accused to undergo imprisonment for life.

2. The prosecution case, in brief, is that accused/appellant Ishwari Bai was married to deceased Suresh. Accused/appellant Indra Bai is the mother of Ishwari Bai. However, on account of certain dispute between deceased Suresh and Ishwari Bai, Ishwari Bai left the matrimonial home within a very short duration and started residing with her mother Indra Bai. Indra Bai and Ishwari Bai filed a compiaint before the Mahila Police Station, Durg leveling certain allegations against deceased Suresh Kumar upon

which Suresh was summoned to appear in the Police Station on 23rd August 1997 and on that day the matter was compromised in the Police Station. The deceased and accused Ishwari Bai also executed a compromise letter Ex.-D/3 before the Family Advisory Centre on 23-8-97. After compromise, accused/appellants Indra Bai and Ishwari Bai invited Firteen Bai, mother of the deceased and deceased Suresh to their house and said that they should come to their house and stay with them in the night. Next day morning Ishwari Bai will be sent with the deceased. Acceding the request Firteen Bai, deceased Suresh along with PW-5 Bheekham Lal, who was also present at the Police Station, accompanied the appellants to their house. After taking dinner in the night, accused/appellant Ishwari and her husband deceased Suresh went for sleep in a room. Firteen Bai, mother of the deceased, went for sleep in a separate room and Bheekham Lal also went for sleep in a separate room. However, Indra Bai slept in Varandah in front of the room where deceased Suresh and his wife accused Ishwari Bai were sleeping. In the wee hours at about 4 am Firteen Bai heard the cries. However, she found that the door of her room was closed from outside. Somehow, she managed to break open the door, came out and saw that the accused/appellants were attacking her son with an axe and crowbar. She saw that on account of assault made by the appellants her son Suresh received injuries on the head and face, blood was oozing out of the injuries, the clothes on the cot where the deceased was sleeping were drenched with blood. She immediately rushed to the Police Station Supela, Durg and lodged the report at about 5.30 am upon which the S.H.O. Police Station registered the Crime No.434/97 dated 24-8-97.

3. Sub Inspector Ajit Yadav proceeded to the scene of occurrence and prepared the site plan Ex.P/5. Under Ex.-P/6 he also took into possession the axe, weapon of offence on production by accused Indra

Bai. Under Ex.-P/1 he also took into possession the blood stained soil and plain soil from the scene of occurrence. Under Ex.-P/2 he also took into possession the blood stained bed sheet and pillow cover. Under Ex.-P/3 he also took into possession the crowbar stained with blood from the Varandah. Under Ex.-P/7 and Ex.-P/8 he also took into possession the clothes of the accused persons. After giving notice Ex.-P/9 to the Panchas, he prepared Panchanama of the dead body of Suresh Ex.-P/10 and sent the dead body for postmortem examination to the District Hospital, Durg where Dr. S.K. Sinha conducted the postmortem examination and prepared the postmortem report Ex.-P/11. The crowbar and axe, weapons of offence were sent to the doctor for his opinion as to whether the injuries, which were found on the dead body of the deceased, can be caused by these weapons, in turn he gave his report Ex.-P/15. The blood stained articles were sent for examination to the Forensic Science Laboratory, Sagar from where report Ex.-P/18 was received. According to the report, the blood was found on the soil which was taken into possession from the place of occurrence, on the bed sheet, pillow, crowbar, axe and also on the clothes of the accused.

4. After completion of the investigation, charge sheet was filed against the accused/appellants for the commission of offence under Section 302 read with Section 34 of the I.P.C. in the Court of Chief Judicial Magistrate, Durg who in turn committed the case to the Sessions Court from where learned 1st Additional Sessions Judge, Durg received the case on transfer for trial.

5. The prosecution in order to prove the offence against the accused/appellants examined in all 9 witnesses. On the other hand, the statements of the accused were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution evidence and said that in the morning they went to attend the call of nature and when they returned,

(134)

they found that Suresh was dead. They have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments convicted and sentenced the accused/appellants in the manner mentioned in the earlier part of this judgment.

6. We have heard Shri Abhay Tiwari, learned counsel for the accused/appellants and Shri Ashish Shukla, Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

7. As far as the question of death of deceased Suresh Kumar being homicidal is concerned, same has not been disputed by learned counsel for the accused/appellants. Apart from that, PW-4 Firteen Bai has stated that the deceased was assaulted by the accused persons with a crowbar and the axe, and same was witnessed by her. Thereafter, she left the scene of occurrence and lodged the report in the Police Station. PW-5 Bheekham Lal, who was also sleeping in the same house, has stated that he heard the cries of the mother of Suresh at about 4 am and when he tried to come out of the room, he found that the door of the room was closed from outside and same was opened by the mother of the deceased, and he saw that Suresh was lying in the pool of blood and his mother was weeping. PW-8, Dr. S.K. Sinha, Medical Officer has stated that he conducted the postmortem on the dead body of the deceased, 3 injuries were found on his head. In his opinion, the injuries were caused by weapons of offence recovered by the Investigating Officer. In the postmortem report, he mentioned that cause of death was shock and the injuries were ante-mortem in nature. Therefore, in view of the above evidence, it stands proved that the death of the deceased was homicidal in nature.

8. Now coming to the involvement of the accused/appellants in the murder of deceased Suresh, learned counsel for the accused/appellants argued that

at about 4 A.M., the accused/appellants went to attend the call of nature and when they returned after half an hour, they found Suresh in an injured condition. They immediately went to the Police Station and reported the matter. He further argued that D.W.-1, Savitri has supported the above version who accompanied the accused/appellants when they want to attend the call of nature. D.W.-3, Ramratan Sen has stated that on hearing the cries, he went towards the house of the accused persons and he saw that the accused persons were returning after attending the call of nature. He further argued that the accused/appellants have been falsely implicated in the crime.

9. On the other hand, Shri Ashish Shukla, Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer supported the judgment of the trial Court.

10. Having heard learned counsel for the parties, we have perused the judgment of the trial Court as well as evidence and relevant documents, and we are of the considered opinion that the plea of alibi raised by the accused/appellants does not inspire confidence of the Court for the reason that when the accused/appellants went to attend the call of nature, why they had not asked the mother of the deceased Firteen Bai as to whether she wants to go to attend the call of nature, and why the accused/appellants while leaving the house at wee hours did not lock the house from outside. The evidence of D.W.-1, Savitri, who has stated that at about 4 A.M., she along with the accused/appellants went to attend the call of nature also does not inspire confidence of the Court for the reason that D.W.-3, Ramratan Sen has stated that he saw the accused persons returning after attending the call of nature. He has not stated that Savitri was also with them. Neither Savitri has stated that she saw Ramratan Sen and other persons standing in front of the house of the accused persons. In para 3 of her evidence, she has stated that after returning,

136

she went for sleep with her child. After hearing the cries, she woke up and heard that son-in-law of Indra Bai has been murdered. At that time, except the accused persons, no one was present in the house. On the face of it this evidence is not believable, as she has stated that immediately after returning, she was sleeping with her child and after hearing the cries she woke up, that means at least 15 to 20 minutes she must have taken for sound sleep. As per the case of the defence, when the accused persons returned, they saw deceased Suresh in an injured condition, therefore, in ordinary course of nature, they ought to have raised the cries immediately after return. If the house of this witness Savitri is very adjacent to the house of the accused persons, then where was time left for this witness to go for sound sleep so as to wake up after hearing the cries. Therefore, the evidence of this witness in comparison to the evidence of P.W.-4, Firteen Bai is of no value and also for the reasons stated above.

11. As far as the evidence of D.W.-3, Ramratan Sen is concerned, he has stated in his evidence that his house is adjacent to the house of the accused persons. Between 4.30 P.M. to 5 P.M., he heard the cries of some lady who was saying "save save" and after hearing the cries, he came out of the house and he ran after that lady but he could not catch her, therefore, he returned. Thereafter, three to four persons were standing there to whom he informed about the incident and at that time they saw that the accused persons were returning after attending the call of nature. After opening the door, they went inside the house and they saw that Suresh was lying dead. Thereafter the accused persons went to lodge the report. He has further stated that he had not accompanied them to the Police Station. He has stated that he gave the statement Ex.P-19 to the Police. His evidence before the Court is totally contrary to the statement Ex.P-19 given before the Police. His evidence is contradictory

(132)

to the evidence of D.W.-1 Savitri. His evidence cannot be believed for the same reason which has been mentioned while discussing the evidence of D.W.-1 Savitri. His evidence that he could not catch the lady is also not believable. His evidence is of no value in comparison to the evidence of PW-4 Firteen Bai and PW-5 Bhikhamlal who were sleeping in the same house where the crime was committed. Therefore, the trial Court has rightly rejected the evidence of these two persons.

12. Now coming to the evidence of P.W.-4, Firteen Bai, mother of the deceased, she has categorically stated that on 23-8-1997, she along with her son and Bheekham Lal went to the Mahila Police Station where the accused persons lodged the complaint against the deceased and the matter was compromised there. Thereafter on the request of the accused persons, all of them went to the house of accused persons and after taking dinner, they were sleeping in separate rooms. The deceased and accused Ishwari Bai, wife of the deceased, were sleeping in a separate room. In the morning, she heard the cries. When she woke up after hearing the cries, she found that door was closed from outside, somehow she managed to break open the door and saw that the accused persons were assaulting with a Crowbar and Axe to her son. Thereafter, she immediately left for the Police Station and lodged a report. This fact finds corroboration from the F.I.R., Ex.P-16 which was lodged at 5.30 am by this witness and the Police Station is about 3 km away from the scene of occurrence. In the cross-examination of this witness, the defence counsel has not been able to elicit any material which makes the evidence of this witness unreliable. Even though PW-5 Bheekham Lal has been declared hostile but he has corroborated the evidence of PW-4 Firteen Bai to the extent that on the fateful day he along with the deceased and Firteen Bai went to the Mahila Police Station where the matter was compromised. On the request of the accused persons, all of them went to their house and in

(138)

the fateful night after hearing the cries, when he woke up, he found that the door was closed from outside which was opened by PW-4 Firteen Bai and saw that the deceased was lying in an injured condition. On cross-examination by the prosecutor, he has clearly stated that Firteen Bai told him that the accused persons have killed her son. However, he has stated that at that time the accused persons were not present. This fact stands corroborated by the fact that the accused persons reached the Police Station before PW-4 Firteen Bai could reach and lodge the report before the Police Station.

13. It is an admitted position that Ishwari Bai was married to the deceased. on account of some dispute she left the house and she along with her mother lodged the report before the Mahila Police Station against Suresh Kumar, as he had married with some other lady, somehow they compromised the matter in the Police Station. The accused persons requested the deceased and his mother to accompany them to their house. Next day Ishwari Bai will be sent along with Suresh and in the night, in the house of the accused persons the crime was committed. Regarding the compromise between the accused and the deceased document Ex.-D/3 was filed by both the parties before the Family Advisory Centre, therefore, there was an immediate cause for the accused persons to commit the crime as they were not maintaining good relations with the deceased for the reason that the deceased had already married with some other lady that infuriated Ishwari Bai and that was an immediate cause for committing the crime. The clothes of the accused persons were taken into possession by the Investigating Officer and same were sent for chemical examination to the Forensic Science Laboratory. The blouse and sari of accused Indra Bai and sari of accused Ishwari Bai, on examination, found stained with blood and the weapons of offence were also found stained with blood. It is true that these articles were not sent for Serologist's test but looking to the

(139)

evidence of PW-4 Firteen Bai, PW-5 Bheekham Lal and other circumstantial evidence, this report also lends support to the prosecution case about the involvement of the accused persons as the blood was found on their clothes. It is true that the accused persons could not have been connected with the crime in question only on the basis of circumstantial evidence that blood was found on their clothes, without Serologist report to the effect that the group of blood of the deceased and group of blood which was found on the clothes were similar, but in this case, there is other evidence to prove the involvement of the accused persons in the crime and the finding that blood was found on the clothes of the accused persons also lends support to the fact of involvement of the accused persons in the crime in question and the weapons of offence recovered from the place of occurrence were also found stained with blood.

14. In view of the foregoing discussion, we are of the considered opinion that there is no merit in this appeal and learned counsel for the accused/appellants could not make out a case for interference by this Court in the judgment of the trial Court, as there is no infirmity or illegality in the judgment under challenge. The judgment of the trial Court is well reasoned and same is based on the legal evidence, therefore, finding of the trial Court cannot be interfered with.

15. In the result, we do not find any substance in this appeal being devoid of any merit, same is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
SATISH K. AGNIHOTRI
Judge

Barve